

**Oroville Facilities Relicensing
Federal Energy Regulatory Commission Project No. 2100
Draft Summary of the Plenary Group Meeting
September 23, 2003**

The Department of Water Resources hosted a meeting for the Plenary Group on September 23, 2003, in Oroville. A summary of the discussion, decisions made, and action items is provided below. This summary is not intended to be a transcript of the meeting, or to indicate agreement or disagreement with any of the items summarized, except where expressly stated. The intent is to present a summary for interested parties who could not attend the meeting. The following are attachments to this summary.

Attachment 1	Meeting Agenda
Attachment 2	Meeting Attendees
Attachment 3	Meeting Flip Chart Notes
Attachment 4	Process Update
Attachment 5	Work Group Meeting Abstracts
Attachment 6	Process Task Force Update
Attachment 7	Summary of Collaborative Off-Line Discussion

Welcome and Introductions

Attendees were welcomed to the Plenary Group meeting and introduced themselves and their affiliations. The proposed meeting agenda and a list of meeting attendees are appended to this summary as Attachments 1 and 2, respectively. Meeting flip chart notes are included as Attachment 3. The Facilitator reviewed the agenda and objectives were discussed.

Process Update

Where We Are in the Process

Mark Andersen with DWR provided the group with an update on where we are in the relicensing process (see Attachment 4). Mark began his update by sharing information and facts about the State deficit. He explained that the deficit is a statewide problem affecting all agencies. He informed the collaborative that DWR has lost approximately 100 positions, seriously challenging the relicensing program.

Mark informed the participants that the work groups continue to develop and discuss resource actions. He mentioned that study results would be received through the beginning of the next calendar year and he reminded the group of the April 2004 completion date target for the first draft Preliminary Draft Environmental Assessment. He outlined the next steps for the Plenary Group through December 2003 as the work groups begin to provide recommendations for proposed resource action analysis to the Plenary Group and the PDEA development team.

Work Group Meeting Abstracts

The Facilitator informed the participants that abstracts covering work group meetings held since the last Plenary Group meeting are included with the meeting agenda (see Attachment 5). More detailed work group meeting summaries are posted on the relicensing web site.

Process Protocol Task Force Update

Anna West with the consulting team provided the group with an update on the Process Protocol Task Force activities (see Attachment 6). The PPTF was directed by the Plenary Group to recommend revisions to the Process Protocols to include the settlement negotiation process.

Anna identified the task force meeting participants and summarized their activities since April 2003. She identified major proposed revisions and summarized the task force intentions for each section. The Plenary Group participants were provided a redline/strikeout version of the Process Protocols indicating the proposed revisions and asked to review the document for further discussion. Several PPTF participants indicated areas of continued discomfort with the suggested revisions including the intended role of the Plenary Group in the settlement process and the role of confidentiality in settlement negotiations.

Anna offered that confidentiality is important to negotiations so that ideas offered for discussion are held within the group and not discussed in the media or elsewhere out of context. It is important for negotiators to test various ideas without fear of premature commitment. It is typical to keep negotiation discussions private, between the party you represent and the Applicant. Patrick Porgans, representing JEM Farms, voiced concerns with any agreement to maintain confidentiality during the settlement negotiation process. He stated that his client is the only non-government/non-public entity involved in the relicensing process and he feels that public entities have no right to confidentiality. Patrick also asked whether the Plenary Group as a collaborative body would decide by consensus on any settlement agreement. Rick Ramirez with DWR reminded the Plenary Group that as a collaborative they are not in a position to compel any stakeholder group or individual to sign or not sign a settlement agreement. The hope is for the negotiating group to reach a settlement and the Plenary Group to support the agreement. He agreed that the negotiating group would check in frequently with the Plenary Group and the Facilitator noted the substantial overlap between the two groups. Rick added that negotiators involved in settlement discussions should have some authority to commit to what is proposed so they are likely to be upper levels of management within organizations and agencies.

Cathy Hodges representing Equestrian Trail Riders/Hikers stated that according to the original ground rules for the ALP the media is welcome to attend meetings. She asked if the media was banned from attending settlement discussions. Ron Davis representing California Horsemen's Association stated that PPTF members had agreed that the media should not attend settlement discussions. Ken Kules representing Metropolitan Water District of Southern California stated that confidentiality was not meant to infer secrecy but to acknowledge that what is discussed in the negotiating room should stay there. Ron added that in his opinion the process is fragmented with no plan to negotiate a settlement as a collaborative but instead for the negotiation group to go forward from an initial offer of settlement determined solely by the licensee.

Patrick Porgans asked for clarification on the Plenary Group's role in the settlement agreement, adding that he does not expect the Plenary Group to have an override in the process. He asked if the concept of the negotiations team is one of a manageable group. Anna agreed that was the intent; however, the Process Protocols state that anyone can participate.

Patrick also asked what would happen if someone breaches the confidentiality agreement. Anna West responded that this process was all about good faith negotiations and the intent is for individuals to uphold the ground rules to the extent they can. Ron Davis expressed concern for legal action if confidentiality is breached and the potential for exclusion from the settlement table without agreeing to confidentiality. Rick Ramirez noted that the Process Protocol revisions do not include any penalties if confidentiality is breached but added that good faith negotiations are a fundamental part of the process. Richard Roos-Collins with the Natural Heritage Institute offered that confidentiality should be viewed as a balance – on one side a negotiator has to keep their chain of command or decision makers informed while on the other side it is critical for

negotiators to be able to take risks even if not authorized by their principals. Roger Masuda representing Butte County added that anything offered in negotiations cannot be used against the parties making the offering and we must be able to protect any participant from legal action relative to offers made. He mentioned that the County agrees with the intent of confidentiality in settlement negotiations and does not have a problem with the language suggested for the Process Protocols. Michael Pierce also representing Butte County added that confidentiality cannot be practically enforced, but is necessary because it works.

Mike Meinz representing the California Department of Fish and Game said the entire issue of confidentiality is a matter of trust and indicated that DFG supports the revised Process Protocols. Valerie Fischer Gates agreed that the negotiators should be able to brainstorm in an environment free from the fear that their discussions would show up in the morning paper and supports confidentiality. Nan Nalder representing the State Water Contractors said that confidentiality has been an important element in ALPs where she has been a participant and trust tends to carry you through the rough spots.

Patrick Porgans feels the issue of confidentiality will become problematic. Valerie Fischer Gates read an excerpt from the revised Process Protocols relating to confidentiality "...Settlement negotiations will be confidential to the extent permitted by law." Valerie said the Process Protocols are intended for allow participants to communicate with the principals of their group and confidentiality would conform to laws in place to protect the public. Roger Masuda asked Patrick to specify what particular part of confidentiality was a problem for him. Patrick responded that he feels all discussions should take place in the open and that he does not trust DWR, State Water Contractors, DFG, or most of the other public agencies sitting at this table. His primary issue is that the local representatives in the collaborative are not savvy to the negotiation process and will not be treated fairly. He reiterated his opposition to confidentiality and informed the Plenary Group that he intends to share with the public anything and everything he discovers. Anna West asked Patrick if he wanted to meet with her to further discuss the issue of confidentiality and he responded that he wanted to research the law and would contact her.

Ward Tabor with DWR reminded participants that public agencies have confidential negotiations frequently. Cathy Hodges asked what laws or government codes allow DWR to negotiate in private and Ward cited negotiations for employment, services, contracts, and purchases of lands as examples of instances that are negotiated privately and offered to provide some citation to Cathy. He indicated that the negotiating group would look forward to comments from the Plenary Group as well as technical information from the work groups as the negotiations progress. Ward also said that participants satisfied that their interests were met should be the ones to sign the settlement agreement.

Rick Ramirez asked if anyone from a federal agency would weigh-in on the topic of confidentiality. Eric Theiss representing NOAA Fisheries said he does not have an issue with the concept of confidentiality at the negotiation table. In general, NOAA Fisheries supports the revised Process Protocols and believe they will allow them to reach settlement. He asked for clarification on the definitions for participant and representative and suggested the Process Protocols define participants as anyone wanting to participate in the Oroville Facilities Relicensing process and define a representative as the negotiator within the settlement negotiating team.

Anna West informed the participants that the State Water Resources Control Board requested additional time to review the revised Process Protocols and had asked the Plenary Group not to

approve the revisions at today's meeting. Ward Tabor added that Barbara Leidigh with SWRCB has tentatively agreed to meet with DWR to discuss the proposed revisions to the Process Protocols. Eric Theiss proposed meeting with Barbara Leidigh, Sharon Stohrer, and a U.S. Fish & Wildlife Service legal representative to see "where we are at" regarding quotations from the agencies that are included in the proposed revisions. Eric said NOAA is supportive of the revisions but depending on what SWRCB wants to do with the quotes he might have to take it back to his management. NOAA is in favor of the revisions as proposed and would like to talk to the SWRCB about this issue. Ward Tabor added that both he and Anna West are committed to work with SWRCB staff for resolution.

Tom Berliner representing the Santa Clara Valley Water District pointed out that SWRCB had the same amount of time as everyone else to review the revised Process Protocols and suggested the Plenary Group approve all language with the exception of the SWRCB language, which would be pending approval from SWRCB. Richard Roos-Collins noted that the PPTF has been working on this document for many months and asked what SWRCB's reaction would be if the Plenary Group went forward with Tom's suggestion. Ward responded that he would prefer to honor the expressed wishes of Barbara and the SWRCB. Mike Mainz suggested that the approval shouldn't be dependent on approval from SWRCB since SWRCB has maintained throughout this process that it would not be a settlement agreement signatory. Roger Masuda added that approving the revised Process Protocols was not noted on today's agenda.

The Facilitator asked the group if the revisions to the Process Protocols should be placed on the consent calendar for the next meeting. Tom Berliner believed the revised Process Protocols were going to be approved at this meeting but added that it would be consistent with past Plenary Group practices to hold it over to the next meeting. Rick Ramirez noted that several participants attending today's meeting had already voiced support for the revisions through the PPTF process but agreed to hold off approving the revised Process Protocols until the next meeting. The Facilitator suggested identifying areas of heartburn with suggested revisions for consideration and approval at the next Plenary Group meeting.

The Plenary Group continued discussion of outstanding issues of interest to several local participants and the Facilitator reviewed the issues she had recorded on the flip chart (see Attachment 3).

Scott Lawrence representing the Feather River Recreation and Park District said he recognizes a lot of work went into developing the revised Process Protocols, but he needs more time to digest both sides of the confidentiality issue and would like to continue the discussion at the next Plenary Group meeting. He noted that this is his only issue and is otherwise comfortable with the proposed revisions. The Facilitator closed the discussion with the action to continue the discussion and approval of the revised Process Protocols at the next meeting.

Action Items – July 29, 2003 Plenary Group Meeting

The Facilitator reviewed the status of the action items from the July 29, 2003 Plenary Group meeting.

Action Item #P133: DWR and NOAA to discuss fish passage Proposed Resource Action.
Responsible: Rick Ramirez/Eric Theiss
Status: The meeting between DWR and NOAA has not been scheduled but both are evaluating available meeting dates. (Carry-over action)

Action Item #P134: Off-line discussion (brainstorming) to clarify remaining issues and suggest solutions.

Responsible: Rick Ramirez/Facilitator/Patrick Porgans/Eric Theiss/Cathy Hodges

Status: The Facilitator provided the group with a written summary of the brainstorming meeting held on September 12 (see Attachment 7 for details). The Facilitator reviewed the four categories discussed on the agenda for that meeting and possible solutions suggested although not agreed to. The Facilitator said there were numerous additional items discussed during the off-line meeting and she invited the other meeting participants to add anything she might have missed. She also mentioned that there appears to be a few participants who feel these issues are significant enough to derail the collaborative process. The Facilitator reminded the group that the purpose of the meeting was to focus the issues and then bring them back so the Plenary Group could determine if further discussion would be productive enough to place the topic on the agenda for discussion at a future Plenary Group meeting.

Ron Davis added that the group also discussed the issue of agreements reached by the collaborative that are subsequently overruled by DWR. Rick Ramirez agreed that with the addition of Ron's comment, the Facilitator had captured the issues discussed and he clarified that the solutions identified were individually offered and not offered as a group. Cathy Hodges noted that cumulative impacts were also a concern in the trails issues. She added that there was no baseline study done for the trails amendment that recently converted all trails within the project boundary to multi-use.

Patrick Porgans reminded the Plenary Group that he continues to have issue with the process for cumulative impact analysis and stated that NOAA is considering dropping out of the process over the issue. Eric Theiss, representing NOAA, confirmed the potential for the cumulative impacts issue to trigger their withdrawal from the collaborative process and added that he has other issues with the process. The Plenary Group discussed the potential for issues that are unresolved within the collaborative moving to the alternative dispute resolution process that is included in the existing Process Protocols and Mike Mainz asked for clarification on who would go to dispute: NOAA and DWR or NOAA and the ALP. He added that DFG does not agree with NOAA on the cumulative impact issue. Rick Ramirez asked Eric Theiss to clarify NOAA's position with regard to the ALP. Eric replied that NOAA has some concerns sympathetic to the local stakeholders but probably would not withdraw due to those concerns alone. The cumulative impact issue is what would trigger NOAA to withdraw from the process. He added that NOAA's primary concern is to complete a thorough fish passage analysis.

Ken Kules asked what the impacts would be if local participants withdrew from the process, and how would the ALP move forward without local participation. Jon Ebeling representing Butte County compared the Traditional Licensing Process (TLP) with the ALP and concluded that the TLP would not include many opportunities for much input from local participants. Vince Wong noted that Butte County, City of Oroville,

Feather River Recreation and Park District, and the JPA represent the local population and asked if those entities supported the ALP process. Roger Masuda said Butte County understands the local individual participants' frustration; however, the County wants to continue working on the process and they feel confident they will see some results. Roger added that the County has the same concerns that NOAA has about cumulative impacts but is willing to work within the process to reach resolution on the issue rather than dismantling the ALP. He did indicate that the County considers how DWR handles the trails issue under the existing license as an indicator of how DWR intends to comply with the new license. He requested that DWR explain why they are not complying with the existing license and directive from FERC.

D.C. Jones a local resident resented the reference to "local participants" because everyone doesn't agree that the ALP is broken and suggested using the phrase "some local participants". Scott Lawrence recognized that some participants want to continue to discuss these issues at some level and suggested identifying one or two issues for discussion at the next couple of Plenary Group meetings.

Rick Ramirez reminded the Plenary Group that participants have spent some time on these issues and there are some obvious disagreements that may not be solved. He noted that there is an important item on the agenda and they probably would not be able to spend the original amount of time allocated for that due to the length of time spent on this item. He expressed concern for the direction the process was going when we seem to continually revisit issues. Patrick Porgans said he is observing a decrease in the level of confidence people have in the ALP and added that trust is paramount to the success of the process.

Michael Pierce questioned the decisions recently made regarding ORAC and Rick Ramirez clarified that the decision concerning the ORAC meeting schedule and DWR attendance was within the FERC order and done in conversation with FERC. Michael suggested DWR come back with solutions to the cumulative impacts, trails, and ORAC issues. Several of the SWC representatives caucused regarding the topic at hand and Ken Kules reported that the SWC do not consider the issues as a package and acknowledged that while selected issues might come back to the Plenary Group, the trails and ORAC issues should not come back as they are existing license issues. Mike Mainz supported the SWC statement and agreed that the issues are part of the existing license. Tom Berliner added that these issues are already at the highest level of dispute resolution at FERC.

Roger Masuda requested an off-line meeting with DWR to discuss the trails issue. Roger suggested meeting attendees should include Butte County, trails people, and DWR. Rick said he was willing to present this issue to DWR management for consideration and if approved by his management, agreed to set up a meeting to include Butte County, DPR, trails representatives, and ORAC. Michael Pierce suggested the confidence level within the community would increase if DWR deals with

this appropriately. Mike Mainz suggested that these existing license issues are hampering the process to relicense the project.

The Plenary Group discussed the remaining issues and Ken Kules indicated that the solutions outlined for confidence in the ALP and meaningful stakeholder input are vague and suggested those issues not be discussed further by the Plenary Group. The collaborative was split over the issue and Roger Masuda suggested that if the issues are discussed further by the Plenary Group, they should do so only if there are specific solutions for consideration. He suggested that potential solutions be submitted by a given date and then agendaize the item for consideration by the Plenary Group. Ron Davis requested that DWR come forth with an offer of solution but the Facilitator noted that if DWR does not see a problem, it would be difficult for them to come up with a solution. Roger suggested possible solutions should be submitted by October 15 then the group can decide if they want to continue the discussion. The Facilitator suggested solutions be submitted directly to her and she will distribute to the Plenary Group in advance of the next meeting for consideration.

Mike Mainz questioned why this has to be part of the collaborative and when participants would trust DWR. He said that there is always going to be a level of trust needed and some participants appear that they will never have that trust. Mike said these issues are not part of the collaborative approach and he is not interested in discussing it again at these meetings. Rick Ramirez acknowledged that local distrust in DWR has been expressed since the beginning of this process as a continuing issue with the ALP. He indicated the need to evaluate the viability of the ALP that appears to hinge on some level of trust that may not be attainable by some of the participants. Craig Jones representing the State Water Contractors echoed Rick's statement and mentioned the commitment from DWR and the SWC to fund Riverbend Park as well as work on numerous interim projects as clear signals to the community that DWR is making a good faith effort with the relicensing. Rick added the approval of 71 study plans as evidence that the collaborative is working.

Rick also pointed out as an example of the trade-offs involved in further discussion of broad topics such as this the fact that the Plenary Group exhausted nearly the entire time on today's meeting on this issue and thus would not have an opportunity to discuss the remaining agenda items.

Wade Hough representing ORAC agreed that ORAC issues should not be discussed at the Plenary Group meetings. He suggested that DWR is completely aware of ORAC issues and that he believes DWR has chosen not to address them. He also feels DWR has the support of the SWC. Valerie Fischer Gates reminded participants to "keep their eye on the prize." She said they have to keep optimistic on getting good recreation for the community because so many good things are happening and they need to focus on the positive.

Ron Davis agreed that the Plenary Group needs to move on and he does not believe these issues can be resolved in the Plenary Group. Ron feels the Plenary Group does not have any power in the ALP and will go along with moving forward. Michael Pierce indicated that the County expects this process will work and intends to keep working on it until there are no more meetings. Michael also suggested moving forward.

Rick suggested the agenda for the next Plenary Group meeting include the items not covered at this meeting. He said the off-line meeting might be scheduled by then and hopes the trust issue is resolved by the next meeting. Pete Soderberg agreed with Rick's suggestion that the next meeting picks up where this meeting left off.

Roger Masuda asked if the group could have a copy of the handout on the items not discussed. The Facilitator replied that handouts would not be distributed and Ralph Torres with DWR added that there was no sense in distributing the Resource Action Log, as it will be outdated by the next meeting. The Facilitator did distribute to those interested a hard copy of the PowerPoint presentation about the Work Group Resource Action Development Process.

Next Steps

The next Plenary Group meeting is scheduled for October 28, 2003. The time and location of the meeting was not determined.

Action Items

The following action items identified by the Plenary Group include a description of the action, the participant responsible for the action, and the due date.

Action Item #P135: Provide comments on process protocol revisions and place review and approval on next agenda.

Responsible: Plenary Group participants

Due Date: October 28, 2003

Action Item #P136: DWR and SWRCB (sub-meeting may include NOAA and FWS) meet to discuss comments to process protocol revisions.

Responsible: DWR/SWRCB

Due Date: October 28, 2003

Action Item #P137: Provide citations regarding ability of DWR to negotiate privately.

Responsible: Ward Tabor

Due Date: October 28, 2003

Action Item #P138: Meet with DWR, DPR, Butte County, trails advocates to discuss multi-use trail designation and ORAC meetings.

Responsible: DWR will discuss and clear with upper management prior to arranging meeting

Due Date: October 28, 2003

Action Item #P139: Submit solutions to ALP confidence and meaningful stakeholder input issues to Facilitator for distribution to Plenary Group.

Responsible: Plenary Group participants/Facilitator

Due Date: October 15, 2003

Action Item #140: Determine if solutions offered from Action Item #P139 warrant further discussion within the Plenary Group.

Responsible: Plenary Group

Due Date: October 28, 2003

Carryover Action

Action Item #P133: DWR and NOAA to discuss fish passage Proposed Resource Action.

Responsible: Rick Ramirez/Eric Theiss

Due Date: October 28, 2003